

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No.904/BANG/2019</b>
<b>Assessment Year : 2012 - 13</b>

M/s The Mysore co-op Bank Ltd., Gandhi Square, Mysore - 570 001.	<b>Vs.</b>	The Addl. Commissioner of Income-tax, Range-2, Mysuru.
<b>PAN - AAAAT 3068 L</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri S.V Ravishankar, Advocate
Respondent by	:	Shri Kannan Narayanan, JCIT

Date of Hearing	:	08-07-2021`
Date of Pronouncement	:	23-07-2021

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 22/02/2019 passed by the Ld. CIT (A), Mysore on following grounds of appeal:

1. The order of the learned Commissioner of Income-tax (Appeals), Mysuru passed under section 251(1) of the Income Tax Act for AY 2012-13 in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.
2. The appellant denies itself liable to be assessed over the returned income of Rs.2,27,76,012/- on the facts and circumstances of the case.
3. The learned CIT(A) was not justified in confirming the disallowance of Rs. 21,83,116/- being the expenditure incurred towards Annual general meeting, by holding that the appellant has not furnished any details, when the genuineness of the expenditure was not in dispute, on the facts and circumstances of the case.
4. The learned CIT(A) was not justified in appreciating that the expenditure incurred by the appellant was incurred for performing its statutory requirement of conducting the Annual general meeting and the said expenditure was allowable as a business expenditure, on the facts and circumstances of the case.
5. The learned CIT(A) was not justified in appreciating that the revenue was not permitted to sit in the arm chair of the assessee to quantify the expenditure to be incurred for performing its statutory obligations, on the facts and circumstances of the case.

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6. The learned CIT(A) was not justified in appreciating that the order of assessment has been passed in the status which is erroneous and the order is bad in law, and ought to have been set aside as bad in law on the facts and circumstance of the case.
7. The learned CIT(A) ought to have appreciated that the disallowance under section 36(1)(viiia) of the Act, was not in accordance with law and the same ought to have been adjudicated on the merits of the matter and ought not to have been dismissed as not pressed by the Appellant, which was on the erroneous premise that the claim was erroneous, on the facts and circumstances of the case.
8. Without prejudice, the learned CIT(A) was not justified in appreciating that the appellant has made a proper claim of Rs. 18,46,704/- under section 36(1)(viiia) of the Act, on the facts and circumstances.
9. The appellant denies the liability to pay interest under section 234B and 234C of the Act, in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernible from the order and hence deserves to be cancelled on the facts and circumstance the case.
10. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.
11. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

**Brief facts of the case are as under:**

2. The assessee is a co-operative bank and filed its original return of income on 30/09/2011. The case was selected for

scrutiny and notices under section 143(2) was issued to assessee in response to which the representative of the assessee appeared before the Ld.AO and called requisite details as called for.

Before completing the assessment in the absence of satisfactory explanation the Ld.AO made disallowances and computed total income in the hands of assessee at Rs.4,51,92,800/-.

2.1 Aggrieved by the order passed by the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

3. The Ld.CIT(A) while completing appellate hearing concluded that the addition on disallowance made under section 36(1)(vii) of the act was not pressed by the Ld.AR and thereby dismissed the ground. In respect of the disallowance made regarding general body meeting expenses under section 37 (1) the Ld.CIT(A) held that as assessee did not substantiate its claim by with documentary evidences the addition is upheld. The other issues raised by assessee was allowed.

3.1 Aggrieved by the order of Ld.CIT(A) assessee is in appeal before us now.

**4. Ground No.3-5** Ld.AR submitted that the issue was remanded by coordinate bench of this *Tribunal* in assessee's own case in *ITA no.552/Bang/2014 & 2000/Bang/2017* for *assessment year 2008-09* by order dated *01/03/2019*. He submitted that, the Ld.AO allowed the claim in the remand proceedings by ITAT while giving order effect to an order passed in assessment year 2008-09.

5. We have perused the submissions advanced by both sides in light of records placed before us.

5.1 For year under consideration, assessee claimed expenses towards annual general meeting which was disallowed by the Ld.AO. Coordinate bench of this *Tribunal* in assessee's own case (supra) remanded the issue to Ld.AO for fresh consideration. In the remand proceedings, Ld.AO disallowed the claim to the extent that were not supported by any bills and vouchers.

5.2 The Ld.AR submits that similar expenditure was incurred by assessee for year under consideration by holding that these are not incurred wholly and exclusively for purposes of business. We note that assessee mandatorily has to conduct general body meetings annually. Also that, except for bifurcating expenses, nothing else has been provided by assessee to substantiate its claim. We are therefore inclined to remand the issue back to Ld.AO for verification. Assessee is directed to file all relevant details in support of its claim.

**Accordingly these grounds raised by assessee stands allowed for statistical purposes.**

**Ground No. 6-8**

6. At the outset, the Ld.AR submitted that issue alleged in ground No. 6-8 are without any basis. It has been submitted by the Ld.AR that the observations of Ld.CIT (A) that assessee had not pressed the issue is incorrect. The Ld.AR has filed an affidavit dated 17/7/2021 by the representative of assessee who appeared before the Ld.CIT(A) confirming the fact that no such statement was made in respect of these issues.

6.1 He submitted that the disallowance made by the Ld.AO under section 36(1)(viiia) of the act pertains to claim of deduction in excess of provision for bad and doubtful debts.

6.2 The Ld.AR drew our attention to the balance sheet placed at page 11, 15, 16 of paper book wherein a specific provision as required under section 36(1)(viiia) of the act was created. He submitted that the Ld.AO went on a footing that there was no specific provision that was created by assessee in respect of the same. At the time of hearing before the Ld.CIT(A) instead of verifying the same he submitted that the Ld.CIT(A) dismissed the ground by stating that it was not pressed.

7. We have perused submissions advanced by both sides in light of records placed before us.

7.1 Before us the assessee had submitted that though the nomenclatures used is provision for non-performing asset but actually with the provision has been created for bad and doubtful debts. The deduction is in excess of the provision for bad and doubtful debts which the Ld.AO disallows. Ld.AR placed reliance on the decision of *Hon'ble Karnataka High Court* in case of *CIT vs Davangere District Central Cooperative Bank Ltd.* reported in (2021) 123 Taxmann.com 37 in support of his contention.

7.2 We note that *Hon'ble Court* in the above decision has observed as under:

7. We have considered the submissions made by learned counsel for the parties and have perused the record. In the course of assessment proceedings, it was noticed that assessee had debited Rs. 1.5 crores as provision for non-

performing asset but in the income computation sheet the same has not been added. The assessee was given an opportunity to explain why non-performing asset provision has not added back to the total income, in the income computation sheet and again deduction 7.5% under section 36(1)(vii) has not been claimed. The assessee thereupon submitted that a provision has been made as per the norms of the Reserve Bank of India and the details of non-performing assets as well as provisions made were provided. The Commissioner of Income Tax (Appeals) held that deduction for provision for bad and doubtful debt is allowed under section 36(1)(vii) of the Act in the light of the decision of the Supreme Court in *UCO Bank Ltd.(supra)*. The tribunal in its order dated 10-10-2014 *inter alia* has held that though the assessee has used the nomenclature as provision for non-performing assets but in pith and substance, the provision has been created for bad and doubtful debts and in doing so the assessee has followed the guidelines framed by Reserve Bank of India. The tribunal has therefore, affirmed the finding recorded by the Commissioner of Income Tax (Appeals).

8. This court in *Canfin Homes Ltd. (supra)* after taking note of Section 145 of the Act has held that once a particular asset is shown as non-performing asset then the assumption that it is not yielding any revenue. When an asset is not yielding any revenue, the question of showing that revenue and paying tax would not arise. The contentions, which are sought to be raised by learned counsel for the revenue do not arise for consideration in the context of substantial question of law, which has been framed by this court. The concurrent findings have been recorded by the Commissioner of Income Tax (Appeals) as well as tribunal in this regard, which cannot be termed as perverse.

In view of preceding analysis, the second substantial question of law is answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

7.3 At page 11 of paper book assessee has shown in the balance sheet sum of Rs.2,65,09,200/-is bad and doubtful reserve and Rs.10,71,000/-as provision for standard assets. Further at page 15 being the profit and loss account assessee debited Rs.12,09,200/- being provision for non-performing assets and Rs.1,07,100/- being provision for standard assets this shows that the excess of the provision has not been claimed by assessee under section 36(1)(vii) has not been claimed.

7.4 We therefore do not find any reason for the disallowance to be upheld.

**Accordingly these grounds raised by assessee stands allowed.**

**8. Ground No. 1, 2 and 10-11** are general in nature therefore do not require any adjudication. **Ground No. 9** is consequential.

**In the result appeal filed by assessee stands allowed.**

Order pronounced in the open court on 23<sup>rd</sup> July, 2021

Sd/-  
(B. R. BASKARAN)  
Accountant Member  
Bangalore,  
Dated, the 23d July, 2021.

Sd/-  
(BEENA PILLAI)  
Judicial Member

/Vms/

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		<b>Date</b>	<b>Initial</b>	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-07-2021		Sr.PS
3.	Draft proposed & placed before the second member	-07-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-07-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-07-2021		Sr.PS/PS
6.	Kept for pronouncement on	-07-2021		Sr.PS
7.	Date of uploading the order on Website	-07-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-07-2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS